

OPINION
62-175

December 15, 1962 (OPINION)

MUNICIPAL INDUSTRIAL DEVELOPMENT ACT

RE: Refunding

At your request, we have had under consideration the proposed refunding of the unpaid residuum of the City of Williston Industrial Development Project First Mortgage Revenue Bonds of July 1, 1960, issued as of that date in the original aggregate principal amount of \$1,750,000.00.

We understand that the current unpaid principal balance of these bonds totals \$1,474,000.00 and that the concerns presently leasing and operating the Williston Salt Plant and LPG storage depot, namely, Dakota Salt and Chemical Company and General Carbon and Chemical Corp., the latter being an owner and holder of a portion of the said Williston bonds in the aggregate principal amount of \$238,000.00 as well as guarantor of payment of the issue, have approached The Bank of North Dakota as owner and holder of \$1,054,000.00 principal amount of said bonds to arrange reamortization of the remainder of the issue in such fashion as to reduce substantially the annual payments needed to service and pay the same, thereby enabling the plant and storage depot to become a more fully self-sustaining industrial operation.

It has been pointed out that the existing bond maturity schedule requires payment of \$184,000.00 principal on July first each year 1963 through 1969 and \$186,000.00 principal on July 1, 1970. The outstanding bonds were issued subject to redemption by the City of Williston on any semiannual interest payment date prior to maturity on thirty days prior notice in writing mailed to the place of payment, on the basis of par and accrued interest to the date of prepayment, but only after payment of all higher numbered bonds of the issue and only out of moneys in the sinking fund in excess of principal and interest requirements of the issue for the thirteen months next following plus the sinking funds reserve requirements, such requirements being currently for the sum of \$50,000.00. The operators request refunding in accordance with the provisions of Section 40-57-03, Subsection 10 of the North Dakota Century Code, which reads as follows:

"POWERS OF MUNICIPALITY. * * * *

"10. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter. * * * *."

The operators have suggested industrial development refunding bonds to be retired 1963 through 1980, \$82,000.00 principal each year through 1979, and \$80,000.00 principal to be scheduled for payment July 1, 1980. They have indicated that the refunding bonds scheduled to mature 1976 through 1980 may bear interest at the rate of five

percent per annum and that they will see to the payment of costs and expenses incidental to the refunding issue, including costs of printing the new bonds, a reasonable payment to The Bank of North Dakota for its expense in the matter and legal fees for preparation of supplemental documents in connection with refunding.

On the foregoing outline of facts, you request an opinion of this office whether or not refunding is legally permissible at this time under our statutes, and more particularly whether there is any reason, based on the law of this state, that the longer maturing bonds of the proposed issue may not bear a rate of interest higher than the maximum rate payable on the presently outstanding Williston issue, namely 4 3/4 percent per annum.

You are advised that it is the opinion of this office that Chapter 40-57 of the North Dakota Century Code, as amended, provides adequate legal basis for refunding the residuum of bonds previously issued by Williston under that chapter.

Notwithstanding that this chapter lacks detailed directions for the conduct of refunding operations, it seems clear that the Legislative Assembly intended to authorize the interested parties to take reasonable action from time to time to accomplish the long term basic purpose of the Municipal Industrial Development Act, namely, fostering the establishment, maintenance, and growth of manufacturing industry in this state.

It is true that the Code contains a separate Chapter 40-36, relating to revenue bond refinancing, and that certain of the provisions of that chapter may be helpful in working out a reasonable refunding plan. However, because the Municipal Industrial Development Act is a later statute enacted to serve a special purpose and because the limitations imposed by provisions of Chapter 40-36 of the North Dakota Century Code are expressly declared inapplicable to powers conferred by any other law of this state, we think it clear that such restrictive or limiting provisions as found in Subsection 4 of Section 40-36-05 of the North Dakota Century Code, as to maximum rate of interest, have no proper application to refinancing or refunding under Chapter 40-57 of the North Dakota Century Code, as amended.

LESLIE BURGUM

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